

ACLU Kansas
Hot Topics Series

Cuffing and
Shackling
of Youth



Cuffing and Shackling of Youth

Kansas courts indiscriminately shackle and restrain children appearing before them. Courts are not required to first decide whether it is necessary, and nothing prohibits courts from using restraints on children as a matter of course. Most states restrict this practice in some way but Kansas has no statewide limitations or guidance.¹ By requiring young people to appear before courts in chains without a compelling justification, Kansas ignores a national trend to end the practice, risks the well-established harms that shackling and cuffing causes, and embraces an anachronistic affront to basic decency.

“Shackling impedes the attorney-client relationship, chills young people’s constitutional right to due process, runs counter to the presumption of innocence, and draws into question the rehabilitative ideals of the juvenile court.”² There is no reason for the practice to continue in Kansas. We must demand better.

The Effects of Shackling on Youth

The use of handcuffs, leg restraints, and belly restraints has a well-established adverse impact on young people. First, there is the very real possibility of physical harm. While physical harm may be a less salient concern for adults in the criminal justice system,³ the same cannot be said of children. Because young people are still developing and growing, medical experts have cautioned that children’s growth plates could be damaged by indiscriminate cuffing and shackling practices.⁴

But physical harm is far from the only dangerous side effect. Mental health professionals generally agree that shackling and physical restraints should only be used with juveniles as a last resort.⁵ Shackles and restraints may be retraumatizing for individuals who have already experienced violence or trauma; it may worsen traumatic stress symptoms, especially when young people involved with the criminal justice system have a higher than average prevalence of mental health needs compared to other populations; and, children in the criminal justice system are particularly vulnerable to

exacerbated trauma symptoms which physical restraints could engender.⁶

Finally, there is of course the moral and reputational harm shackling causes which is hard to quantify. Young people, struggling to discover and define themselves in the best of circumstances, are often at their most vulnerable when involved with the criminal justice system. Describing her experience of being shackled in a Maine courtroom as a 12 and 14-year-old, Skye Gosselin wrote, “What I still think about today. . . is the humiliation and shame I felt being in public view, weighed down by loud, metal shackles. . . . The dehumanizing experience shaped not only how others saw me, but how I saw myself for many years.”⁷ That dehumanization, humiliation, and shame is repeated throughout Kansas courtrooms for the children who appear there, and it is often done without any justification or, in some instances, without any thought at all.

¹National Juvenile Defender Center, Limited Justice: An Assessment of Access to and Quality of Juvenile Defense in Kansas (2020), p.72, available at: <https://njdc.info/wp-content/uploads/Kansas-Assessment-Web.pdf> ²See generally NAACP Legal Def. Fund, Critical Race Theory FAQ, <https://www.naacpldf.org/critical-race-theory-faq/>. ³Id.

³Deck v. Missouri, 544 U.S. 622, 630 (2005) (“Judicial hostility to shackling may once primarily have reflected concern for the suffering -- the “tortures” and “torments” -- that “very painful” chains could cause. More recently, this Court’s opinions have not stressed the need to prevent physical suffering (for not all modern physical restraints are painful).” (internal citations omitted)).

⁴National Association of State Mental Health Program Directors Medical Directors Council, Reducing the Use of Seclusion and Restraint, Part II, 8 (2001), available at http://www.nasmhpd.org/general_files/publications/med_directors_pubs/Seclusion_Restraint_2.pdf; see also Brummer et al., supra note 129, app. F ¶ 12 (Aug. 28, 2006) (affidavit describing physical harm that shackling causes children), available at <http://www.pdmiami.com/unchainthechildren/AppendixFDRGwen%20Wurm.pdf>.

Supreme Court Guidance on the Shackling of Adults

Courts and legal scholars have condemned the indiscriminate use of shackling and restraints in the judicial system for centuries. As early as 1769, Blackstone observed of the English common law that “it is laid down in our antient books, that, though under an indictment of the highest nature [a defendant] must be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape.”⁸

Indeed, for adults in the United States, the rule is clear: blanket requirements for defendants to be shackled during the guilty phase of a trial are

impermissible and unconstitutional.⁹ “[T]he Fifth and Fourteenth Amendments [to the U.S. Constitution] prohibit the use of physical restraints visible to the jury absent a trial court determination. . . that they are justified by a state interest specific to a particular trial.”¹⁰

This is so for at least three fundamental reasons. First, any criminal process (to say nothing of non-criminal ones) assumes the defendant is innocent until proven guilty.¹¹ Second, the Constitution guarantees the right to counsel and a meaningful defense; the use of physical restraints can interfere with both.¹² Finally, courts have long expressed concern about the dignity of the judicial process: “The courtroom’s formal dignity, which

includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual’s liberty through criminal punishment.”¹³

It makes little sense to ignore these lofty values when dealing with children, especially when the juvenile justice system is explicitly more concerned with rehabilitation than punishment. “The primary goals of the juvenile justice system, in addition to maintaining public safety, are skill development, habilitation, rehabilitation, addressing treatment needs, and successful reintegration of youth into the community.”¹⁴

⁸See American Psychiatric Association, *The Use of Restraint and Seclusion in Correctional Mental Health Care*, 4 (2006); Howard Bath, *The Physical Restraint of Children: Is It Therapeutic?*, 64 *Am. J. Orthopsychiatry* 40, 41, 48 (1994).

⁹See generally, Anita Nabha, *Shuffling to Justice: Why Children Should Not Be Shackled in Court*, 73 *Brook. L. Rev.*, 1576-1577 (2008), available at: <https://brooklynworks.brooklaw.edu/blr/vol73/iss4/6>.

¹⁰Gary Gately, *Why do we still shackle kids in court?*, CBS News (June 15, 2015), available at: <https://www.cbsnews.com/news/why-do-we-still-shackle-kids-in-court/>; see also, Kim M. McLaurin, *Children in Chains: Indiscriminate Shackling of Juveniles*, 38 *Wash. U. J. L. & Pol’y*, 213, 227-231 (2012), available at: https://openscholarship.wustl.edu/law_journal_law_policy/vol38/iss1/7/ (discussing the “special characteristics of adolescents”).

¹¹4 W. Blackstone, *Commentaries on the Laws of England* 317 (1769) (footnote omitted).

¹²Deck, 544 U.S. at 628-629.

¹³Id. at 629. And while many juvenile proceedings are held in front of judges, not juries, the rationale remains the same. “Shackling youth is inconsistent with the rehabilitative goals of the juvenile justice system and offends due process. . . . It also biases judges and juries against the child.” National Juvenile Defender Center, *Practice & Policy Resources, Topical Issues, Shackling*, available at: <https://njdc.info/practice-policy-resources/topical-issues/shackling/>.

¹⁴*Coffin v. United States*, 156 U.S. 432, 453 (1895) (presumption of innocence “lies at the foundation of the administration of our criminal law”).

¹⁵Deck, 544 U.S. at 631.

¹⁶Id.

¹⁷Youth.Gov, *Juvenile Justice*, <https://youth.gov/youth-topics/juvenile-justice>; see also Juvenile Law Center, *Youth in the Justice System: An Overview*, <https://jlc.org/youth-justice-system-overview>.

National Calls for Change

Limitations on the use of restraints and shackles in youth courtroom proceedings are not novel or uncommon. Thirty-two states and the District of Columbia prohibit or regulate the automatic use of shackles and cuffs in youth courtroom proceedings.¹⁵ Moreover, the American Bar Association, in a 2015 report and resolution, urged “all federal, state, local, territorial and tribal governments to adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with an opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others.”¹⁶

The limitation makes sense and is consistent with the Supreme Court’s guidance on adult shackling in *Deck v. Missouri*. Adopting a clear and state-wide prohibition on automatic youth cuffing and shackling would ensure individuals are not harmed unnecessarily, preserve the dignity and decorum of our courts as a place of fairness and impartiality, and serve to vindicate and protect the rights embedded in our Constitution.

Additional resources from the National Juvenile Defender Center

The Nation Juvenile Defender Center has informative resources to learn more about this practice and the campaigns to end it.¹⁷

Here are some resources for more information:

[Eliminating Shackling in Juvenile Court: Continuing the Momentum](#)¹⁸

[Model Statute/Court Rule](#)¹⁹

[Campaign against Indiscriminate Juvenile Shackling Toolkit](#)²⁰

[Campaign against Indiscriminate Juvenile Shackling Fact Sheet](#)²¹

[Campaign against Indiscriminate Juvenile Shackling Fact Sheet: Shackling and Courtroom Safety](#)²²

¹⁵ Anne Tiegen, National Conference of State Legislatures, *States that Limit Juvenile Shackling and Solitary Confinement* (Aug. 30, 2021), available at: <https://www.ncsl.org/research/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement635572628.aspx>. ¹⁶ American Bar Association, *Resolution 107A* (2015), available at: <https://njdc.info/wp-content/uploads/2014/09/ABA-Report-Resolution-2015-107A-Revised-Approved.pdf>.

¹⁷ <https://njdc.info/campaign-against-indiscriminate-juvenile-shackling/>

¹⁸ https://njdc.info/wp-content/uploads/NJDC_Shackling_FINAL_Web.pdf

¹⁹ <https://njdc.info/wp-content/uploads/2014/09/CAIJS-Model-Statutes-Court-Rules-May-15.pdf>

²⁰ <https://njdc.info/wp-content/uploads/2016/01/Toolkit-Final-011916.pdf>

²¹ <https://njdc.info/wp-content/uploads/2014/09/CAIJS-Fact-Sheet-2014-8-18-15.pdf>

²² https://njdc.info/wp-content/uploads/2016/03/CAIJS_Shackling-and-Courtroom-Safety-3.4.16.pdf